that these matters of the allocation of licences should be placed in the hands of people who will treat them with that expedition that the public interest demands.

As to sentence, I felt considerable doubt on this matter. I am informed that the fine has been paid and after considerable hesitation I have come to the conclusion that in all the circumstances the wisest course is to refrain from reducing it.

I would observe that learned Senior Crown Counsel has thought fit — most properly in my opinion — to withdraw the Crown's cross appeal against the insufficiency of the sentence.

In this connection I would refer to the final sentence in the learned District Judge's careful judgment which reads:

"The whole incident is all the more unfortunate in that it is clear that the accused would have got the stall if he had exercised a little more patience. This is not a case in which a person offers a bribe in order to escape the consequences of some wrong doing on his part, but is a misguided attempt to clinch an advantage, relevant to his livelihood, by corrupt means."

I entirely agree with every word of that, except that perhaps the addition should have been made that the appellant had already exercised two and a half months' patience since his written application has been submitted.

In all the circumstances the appeal must be dismissed and the conviction affirmed. The cross appeal by the State Advocate-General against the sentence must also be dismissed. The sentence in my opinion erring, if it errs at all, on the side of excess.

Appeal dismissed.

OASIS MILK BAR v. LIM TENG & ORS.

[A.C.J. (Ong J.) August 9, 1962]

[K.L. — Civil Appeal No. 4 of 1962]

Master and Servant — Summary dismissal — Refusal of servant to keep record — Whether servants liable to summary dismissal after three days delay.

The respondents were bakers employed by the appellant in a confectionery. On August 11 they were required by the appellant to keep a daily record of the quantity of butter and eggs used by them. The record required was a simple one, but they refused to comply with their employer's wishes. By their refusal the respondents rendered themselves liable to summary dismissal, but the appellant, however, only told them that if they did not want to keep the required record they might as well stop work. The appellant knew that they persisted in their refusal on the 11th, 12th and 13th but no action was taken till the 14th as their services were rendered to fulfil orders already given by customers. In the result the Asst. Commissioner for Labour held that the appellant had condoned and accepted the stand that they would keep no record and he had thereby lost his right of summary dismissal. Accordingly, he was ordered to pay them an indemnity of one month's wages in lieu of notice. On appeal,

Held: the refusal was a continued act of wilful disobedience to the lawful and reasonable order of the employer and it therefore justified summary dismissal each day the disobedience was persisted in. In the circumstances of the case the question of condonation did not arise.

CIVIL APPEAL.

K. A. Menon for the appellant.

Respondents in person.

Ong J.: In this appeal against the decision of the Junior Assistant Commissioner for Labour the only issue is whether the respondents were still liable on August 14, 1961 to summary dismissal after having been so liable three days earlier.

The respondents were three bakers employed by the appellant in a confectionery for cake-making and were rightly held to come within the definition of "labourers" under the Employment Ordinance. On August 11 they were required — and reasonably required, in the opinion of the Junior Assistant Commissioner for Labour who heard their complaint — by the appellant to keep a daily record of the quantity of butter and eggs used by them. The record required was a simple one, the respondents were sufficiently literate and capable of doing what was required, but they refused to comply with their employer's wishes. By their refusal the respondents were held to have rendered themselves liable to summary dismissal, and with this view I entirely agree.

The appellant, however, did not instantly dismiss them but only told them that if they did not want to keep the required record they might as well stop work. He also admitted he knew that they persisted in their refusal on the 11th, 12th and 13th but he refrained from taking any action till the 14th as he needed their services to fulfil orders already given by customers. In the result the Assistant Commissioner for Labour held that the appellant had condoned and accepted their stand that they would keep no record and he had thereby lost his right of summary dismissal. Accordingly, he was ordered to pay them an indemnity of one month's wages in lieu of notice.

In his judgment the Assistant Commissioner for Labour expressed his opinion as to what the appellant should have done when faced with refusal of his request. As an alternative to summary dismissal it is said that "he should have told the complainants that although they had disobeyed his instructions he would allow them to continue working until such time as he decided what to do about them and at the same time reserving his rights to dismiss them immediately after making his decision."

With respect I regret to say that the problem is not one that could be solved by applying the formula suggested or any other formula. The real question is whether the delay of three days meant that the appellant in fact withdrew his requirement that the record should be kept. If there was such a withdrawal, or his conduct during the interval was such that the same

ought to be inferred, then of course the presumption arises that in the contract of employment a new term had been introduced by consent of both parties. The former ground for summary dismissal would have disappeared once the new term had been agreed upon. Considered in this light, I think the answer is clear. The employer did not accept their refusal; on the contrary, he had told them they might as well go if they would not keep the record as required. They persisted in their wrongful refusal, and after the third day it was apparent that the employer's ultimatum "Keep the record or go" had gone unheeded. The refusal was a continued act of wilful disobedience to the lawful and reasonable order of the employer. It therefore justified summary dismissal each day the disobedience was persisted in. The question of condonation accordingly did not arise, though, had it arisen, it would have to be considered whether condonation can be said to apply to a case of wilful disobedience of a lawful order, as distinguished from misconduct.

I would allow the appeal and set aside the order of the Junior Assistant Commissioner for Labour.

Appeal allowed.

Solicitors: *Braddell & Ramani.*

CHAN CHWEN KONG v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Good JJ.A.) May 3, 1962]

[Penang — F.M. Criminal Appeal No. 13 of 1962]

Criminal Law and Procedure — Murder — Circumstantial evidence — Child evidence — Misdirection.

The appellant was convicted for the murder of a woman and her child and was sentenced to death. It was argued on appeal that: (i) the evidence was entirely circumstantial; (ii) the trial judge dealt with the need for corroboration of the evidence of the child witnesses unsatisfactorily; (iii) the trial judge misdirected the jury by suggesting to them that the evidence of the defence is to be regarded and evaluated in isolation and that if that fails to come up to some standard proof is to be discarded.

Held: (1) in cases where the evidence is wholly circumstantial, what has to be considered is not only the strength of each individual strand of evidence but also the combined strength of these strands when twisted together to make a rope;

(2) although the trial judge did not administer the necessary caution to the jury as suggested in *Chao Chong* v. *Public Prosecutor* (1), nevertheless the Court was not prepared to say that the terms in which he did administer the caution was wrong;

(3) the suggestion of the learned trial judge that the evidence for the defence is to be evaluated in isolation and that if it fails to come up to some standard proof it is to be discarded is beyond the authorities. However in this case if the jury had been properly directed they would have inevitably come to the conclusion that the prisoner was guilty of both murders and therefore the case was one which came within the scope of section 29(2) of the Court Ordinance, 1948, and the appeal should be dismissed.

Cases referred to:—

(1) *Chao Chong* v. *Public Prosecutor* [1960] M.L.J. 238.

(2) *Miller* v. *Minister of Pensions* [1947] 2 All E.R. 372.

(3) *Woolmington* v. *Director of Public Prosecutions* [1935] A.C. 462, 481, 482.

(4) *Murtagh and Kennedy* 39 Cr. App. R. 72.

COURT OF APPEAL.

Lee Kok Liang for the appellant.

H. Sankey (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): This appellant was convicted at Johore on 22nd April this year for the murder of a woman and her child and was sentenced to death. He has appealed against his convictions.

We have had the benefit of listening to a very thorough and very persuasive argument from counsel for the appellant for which we are grateful because we have derived much assistance from it. I trust it will not be taken as detracting from that in any way if I say that in our opinion all the grounds of appeal that have been urged upon us are with one exception of little substance.

In the first place we have listened to a careful, accurate and detailed analysis of the evidence against the appellant. That evidence was entirely circumstantial and what the criticism of it amounts to is this, that no single piece of that evidence is strong enough to sustain the convictions. That is very true. It must, however, be borne in mind that in cases like this where the evidence is wholly circumstantial what has to be considered is not only the strength of each individual strand of evidence but also the combined strength of these strands when twisted together to make a rope. The real question is: is that rope strong enough to hang the prisoner?

Again there has been some criticism, not entirely without justification, of the way in which the trial Judge dealt with the need for corroboration of the evidence of two child witnesses. It is unfortunate perhaps that he did not see fit to administer the necessary caution to the jury in the way suggested by us in the case of *Chao Chong* v. *Public Prosecutor* (1). Nevertheless we are not prepared to say that the terms in which he did administer the caution were wrong.

I now come to the ground of appeal which in our view is of some substance and which has caused us a certain amount of difficulty.

The trial Judge commenced his summing-up with certain observations regarding the onus of proof which, with respect, we would describe as unexceptionable. He pointed out that the jury must be sure of the guilt of the accused person. He pointed out that the onus of proving guilt lay upon the prosecution and that that meant the prosecution must satisfy the jury so that they were sure that the accused was guilty